
**UNITED STATES CIRCUIT COURT
OF APPEALS
FOR THE NINTH CIRCUIT**

PUGET SOUND ELECTRIC RAIL-
WAY, a corporation,

Plaintiff in Error,

—vs.—

ALEXANDER MATSON,

Defendant in Error.

No. 3092.

UPON WRIT OF ERROR TO THE UNITED
STATES DISTRICT COURT OF THE WEST-
ERN DISRICT OF WASHINGTON,
SOUTHERN DIVISION.

**Brief of Defendant In Error on Motion to
Quash Bill of Exceptions and
Affirm Judgment.**

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**MOTION TO QUASH BILL OF EXCEPTIONS
AND AFFIRM THE JUDGMENT.**

Comes now Alexander Matson, defendant in error, and moves the court for an order quashing the Bill of Exceptions and for an affirmance of the judgment, for the following reasons:

I.

The proposed Bill of Exceptions was not served, nor filed during the term.

II.

The proposed Bill of Exceptions was not served nor filed within the time allowed by rule 75 of the United States District Court, Western District of Washington.

RALPH WOODS AND
CHAS. L. WESTCOTT,
Attorneys for Defendant in Error.

STATEMENT.

For the convenience of the court we give the following list of the dates and filing in this case since the entry of the verdict:

June 7, 1917	Verdict rendered.
June 8, 1917	Judgment entered.
July 2, 1917	Order made that all causes, motions, demurrers, and other matters now pending and not disposed of are continued until the next term.
July 2, 1917	TERM ENDED.
July 16, 1917	Petition for new trial.

- July 23, 1917 Petition for new trial denied.
 Defendant granted 30 days to
 serve and file bill of exceptions.
- Aug. 20, 1917 Proposed bill of exceptions served
 and filed.
- Oct. 16, 1917 Assignment of errors filed.
 Petition for writ of error filed.
 Order allowing writ of error.
 Bond filed.
- Nov. 13, 1917 Order extending time to Decem-
 ber 17, 1917, within which to
 file record and docket case in
 appellate court.
- Dec. 8, 1917 Order settling bill of exceptions,
 which included the following
 exception of plaintiff: "*Plain-
 tiff excepts because the bill of
 exceptions was not served and
 filed within the time allowed
 by law and the rules of the
 court; and excepts to the sign-
 ing of any bill of exceptions.
 Exception is hereby allowed.*"
 (Signed by the Judge).

As will be seen, judgment was entered in this cause, June 8, 1917, and the term ended July 2, 1917.

At the time of the entry of the judgment the defendant failed to make the usual motion for a stay and for an extension of time within which to file his bill of exceptions. He did nothing until after the term.

ARGUMENT.

THE BILL OF EXCEPTIONS MUST BE PRESENTED TO THE TRIAL JUDGE WITHIN THE TERM WHEN THE CASE WAS TRIED.

In the leading case of *Michigan Insurance Bank vs. Eldred*, 143 U. S. 293; 36 Law Ed. 162, Mr. Justice Gray delivered the opinion of the court. It was held that the bill must be presented *during the term*, unless an order is made *during the term* extending the time. After the term all authority to allow a bill is lost save under very extraordinary circumstances.

The case of *Muller vs. Ehlers*, 91 U. S. 249; 23 Law Ed. 319, holds that bill of exceptions signed after the term is a nullity where no order is made during the term, and no consent is given by defendant in error.

To the same effect,

Morse vs. Anderson, 150 U. S. 156; 37 Law Ed. 1037;

and

U. S. vs. Jones, 149 U. S. 262; 37 Law Ed. 726;

Preble vs. Bates, 40 Fed. 745 (holding that the trial court has some discretion in the matter, but the discretion must be exercised at the same term).

See, also,

Rose's Code of Federal Procedure, vol. 2, page 1537, under title, "Bill to be Signed During Term," and

Reliable Incubator Co. vs. Stahl, 102 Fed. 590;

City of Manning vs. German Ins. Co., 107 Fed. 52.

True, the court made the usual order at the end of the term continuing all matters *undisposed of*. But this case was disposed of, judgment was entered, and application was not made *during the term* asking for extension of time within which to present a proposed bill of exceptions. In the case of *Costello vs. Ferrarini*, 165 Fed. 379, the court held that a general order such as was made in this case saved the plaintiff in error, provided the bill was *presented for allowance during the term*, but not yet acted upon by the court.

It is true, also, that an order was made, *after the term*, granting an extension of time within which to present a proposed bill of exceptions. But the court was without jurisdiction.

**THE PROPOSED BILL WAS NOT PRESENTED
WITHIN THE TIME ALLOWED BY THE
RULES OF THE COURT**

The rules of the District Court for the Western District of Washington provide that the bill of exceptions shall be served and filed within 10 days, at least, after the verdict.

Rule 75 is as follows:

“BILL OF EXCEPTIONS.—A bill of exceptions to any ruling may be reduced to writing and settled and signed by the judge at the time the ruling is made, or at any subsequent time during the trial, if the ruling was made during the trial, or within such time as the court or judge may allow by order made at the time of the ruling, or if the ruling was during a trial, by order made at any time during the trial, or within the time hereinafter mentioned, and when so signed shall be filed with the clerk.

“If not settled and signed as above, provided, a bill of exceptions made be settled and signed as follows:

“The *party desiring the bill shall* within ten days after the ruling was made, or if such ruling was made during a trial, *within ten days after the rendition of the verdict*, or, if the case was tried without a jury within ten days after written notice of the rendition of the decision, *serve upon the adverse party a draft of the proposed bill of exceptions*. The exception must be accompanied with a concise statement of so much of the evidence or other matter as is necessary to explain the exception and its relation to the case, and to show that the

ruling tended to prejudice the rights of such party. Within ten days after such service, the adverse party may serve upon the proposing party proposed amendments to the proposed bill. Such proposed bill and the proposed amendments shall within five days thereafter be delivered by the proposing party to the clerk for the judge. The clerk must, as soon as practicable thereafter, deliver said proposed bill and amendments to the judge, who must thereupon designate a time at which he will settle the bill; and the clerk must, as soon as practicable thereafter, notify or inform both parties of the time so designated by the judge. In settling the bill the judge must see that it conforms to the truth, and that it is in proper form, notwithstanding that it may have been agreed to by the parties, or that no amendments may have been proposed to it and must strike out of it all irrelevant, unnecessary, redundant, and scandalous matter. After the bill is settled it must be engrossed by the party who proposed the bill, and the judge must thereupon attach his certificate that the bill is a true bill of exceptions; and said bill must thereupon be filed with the clerk."

The purpose of such a rule is to settle the facts in the case while the same are fresh in the memory of the trial judge.

Rule 74 provides when a new trial will be granted. Among the causes enumerated is the following:

(8) "Where the right to have a bill of exceptions has been lost without any fault or negligence on the party of the losing party."

The rule also provides that the petition for new trial shall suspend the operation of the judgment, any process thereon, and any writ of error. There is no provision in said rule for the suspension of the time within which to present a bill of exceptions. The usual practice in said court is to ask for and secure an extension of time when the verdict is rendered or when the judgment is signed.

Under rule 81 it is provided that an extension may be granted by order made before the expiration of time, and then such an extension will not be granted for more than 30 days.

Rule 81 is as follows:

“When an act to be done in any action at law or suit in equity which may, at any time, be pending in this court, relates to the pleadings in the cause, or the undertakings or bonds, to be filed, or the justification of sureties, *or the preparation* of bills of exceptions, or of amendments thereto, or to the giving of notices of motions, the time allowed by these rules may, unless otherwise specially provided, be extended by the court or judge by *order made before the expiration of such time*; but *no extension or extensions shall exceed 30 days in all*, without the consent of the adverse party; nor shall any such extension be granted if time to do the act or take the proceeding has previously been extended for 30 days by stipulation of the adverse party; and any extension by previous stipulation or order shall be deducted from the thirty days provided by this rule. It shall be the duty of every party, at-

torney, solicitor or counsel, or other person applying to the court or judge for an extension of time under this rule, to disclose the existence of any and all extensions to do such act or take such proceeding which have been previously obtained from the adverse party or granted by the court or judge; and *any extension obtained from the court or judge in contravention of this rule shall be absolutely null and void, and may be disregarded by the adverse party.* Nothing herein contained shall interfere with the power of the court to extend the time to do an act or take a proceeding in any cause until after some event shall have happened or some step in the cause shall have been taken by the adverse party.”

The bill of exceptions, therefore, should be stricken and the judgment affirmed.

Respectfully submitted,

RALPH WOODS AND
CHARLES L. WESTCOTT,
Attorneys for Defendant in Error.

